

Served: December 6, 2001



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 3rd day of December, 2001

Essential Air Service at

**ESCANABA, MICHIGAN
MERIDIAN, MISSISSIPPI**

under 49 U.S.C. 41731 *et seq.*

**Dockets OST-2001-10643 - 2
and OST-2001-10683 - 2**

ORDER ALLOWING SUSPENSION OF SERVICE

Summary

By this order, the Department is allowing Mesaba Aviation, Inc., d/b/a Mesaba Airlines (Mesaba), to suspend its scheduled service at Escanaba, Michigan, effective January 1, 2002; and Express Airlines I, d/b/a Northwest Airlink (Express), to suspend its scheduled service at Meridian, Mississippi, also effective January 1, 2002.

Background

On September 17, 2001, Mesaba (a Northwest Airlink code-share carrier) filed a 90-day notice of its intent to suspend its unsubsidized scheduled air service at Escanaba, effective January 1, 2002. The carrier is currently providing Escanaba with two daily one-stop (at Pellston) round trips to Detroit, with 34-passenger Saab SF-340 aircraft.¹ Under 14 CFR 323.3(a)(5) Mesaba is required to file notice of its intention to suspend service at Escanaba because such cessation of service would reduce the total number of seats linking that community to FAA designated hubs by more than 33 percent

Escanaba also receives service to Milwaukee by Skyway Airlines, a code-share carrier with Midwest Express Airlines. Skyway provides Escanaba with one nonstop and two one-stop round trips to Milwaukee each weekday, and one nonstop and three one-stop round trips to Milwaukee on weekends, with 19-seat Beech 1900-D aircraft.

¹ Prior to the terrorist attacks of September 11, Mesaba provided Escanaba with four daily one-stop round trips to Detroit.

Escanaba's essential air service determination, last established by Order 92-10-18, October 9, 1992, requires at least two nonstop or one-stop round trips each weekday and two over each weekend to Chicago, Milwaukee, Minneapolis or Detroit. Sufficient capacity must be provided each service day to accommodate 38 passengers in each direction.

On September 21, 2001, Express filed a 90-day notice of its intent to suspend its unsubsidized scheduled air service at Meridian, effective January 1, 2002, consisting of three weekday and five weekend nonstop round trips to Memphis, one of Meridian's two designated hubs, with 34-passenger Saab SF340 aircraft. No other carrier provides scheduled service in this market.

Meridian also receives service to Atlanta and Dallas/Fort Worth by Atlantic Southeast Airlines (ASA), a Delta Express code-share carrier. ASA provides Meridian with four daily nonstop round trips to Atlanta and two daily one-stop (at Lafayette, Louisiana) round trips to Dallas/Ft. Worth, all with 30-seat Embraer Brasilia aircraft.

Meridian's essential air service determination, last established by Order 84-11-59, November 14, 1984, requires at least two nonstop or one-stop round trips each day to Atlanta and Memphis. Sufficient capacity must be provided each service day to accommodate 40 passengers inbound and 40 outbound passengers each day.

Community Comments

The Michigan Congressional delegation consisting of Senators Carl Levin and Debbie Stabenow and Congressman Bart Stupak have submitted a letter urging the Department to prevent Mesaba's suspension of service at Escanaba because such suspension would damage the region's economy and further delay the economic recovery of our nation. Specifically, the delegation states that Section 105 of Public Law 107-42, the Air Transportation Safety and System Stabilization Act, states that the Secretary is authorized "to require an air carrier receiving direct financial assistance under this Act to maintain scheduled air service to any point served by that carrier before September 11, 2001." The delegation requests that the Department invoke this language to prevent the pullout of Northwest Airlines from Escanaba.²

² As previously noted, Mesaba operates at Escanaba as a Northwest Airlink code-share partner of Northwest Airlines.

Decision

After careful consideration, we have decided to allow Mesaba to suspend service at Escanaba, and Express to suspend service at Meridian, effective January 1, 2002.

Escanaba

The Michigan congressional delegation notes that Northwest Airlines and Mesaba have received payments under sections 101 and 103 of P.L. 107-42, and believes that the acceptance of those payments obligates those carriers to continue service at Escanaba. First, we must make clear that by its own words, section 105 is precatory, not mandatory. Second, any payments received under sections 101 and 103 are specifically intended to compensate carriers for (a) losses associated with government-ordered stoppages of service, such as occurred immediately after the September 11 attacks, and (b) incremental losses incurred through December 31, 2001, as a direct result of those attacks.

Our experience in implementing the compensation sections of the statute indicates that carriers are generally sustaining losses in excess of the compensation provided for them, sometimes by substantial amounts. This experience has been substantiated by the Comptroller General who, in a letter report to Congressional requesters dated October 5, estimated industry losses through the end of the year at \$1.5 to \$5.5 billion *beyond* the \$5 billion in compensation that Congress appropriated. Under the circumstances, carriers have necessarily taken measures to restrain their system costs, including reductions on under-performing routes. The Airline Deregulation Act of 1978 granted carriers the ability to make adjustments to their domestic route networks, except in the case of essential air service, as discussed below. Impairing their ability to do so under the present circumstances, without just compensation for their losses, would raise very significant legal issues.

The 90-day notice requirement of 14 CFR 323.3(a)(5), or the "one-third rule," was put in place to afford communities a reasonable period of time to react to changes in the market, and to ensure smooth carrier transitions. As noted below, we are requiring Mesaba to accommodate all passengers who have been booked on the carrier.

Escanaba retains its standing under the notice provisions of the EAS program, and any carrier serving the community is obligated to submit a 90-day notice of its intent to suspend if it wishes to discontinue its scheduled service at the community.

After the suspension, Escanaba will still have scheduled service to a major hub airport providing it with excellent access to the nation's air transportation system. The community will continue to receive service on Skyway to Milwaukee, a medium hub and one of the community's designated EAS designated hub destinations. In addition, Skyway has stated that it would increase its Escanaba-Milwaukee service to all nonstop effective at the same time that Mesaba suspends service at Escanaba. Milwaukee has nonstop jet service to most major domestic destinations.

Meridian

Without Express's service, Meridian will still have service on ASA nonstop to Atlanta and one-stop to Dallas/Fort Worth, both large hubs with nonstop jet service to all major domestic destinations. ASA now provides Meridian with 180 inbound and 180 outbound seats to Atlanta and Dallas/Ft. Worth each day, far in excess of Meridian's guarantee of sufficient capacity for 40 passengers in each direction each service day. In addition, six flights a day with 30-seat aircraft will easily accommodate Meridian's current level of passenger demand. In 2000, Express and ASA combined enplaned a total of 21,027 passengers at Meridian, or an average of 58 passengers per day.

We recognize that ASA's continuing service is not operated to Memphis, which is designated as one of Meridian's two hubs in its essential air service determination. However, hub designations assume that the community would receive no service other than to the designated hub or hubs. If other service is in fact available when a carrier files notice to suspend its service, we consider whether the other service can meet the community's needs. In this case, we conclude that ASA's service to Atlanta and Dallas/Ft. Worth will meet Meridian's continuing need for a link to the national air transportation system. Moreover, as a code-share partner of Delta Airlines, the major carrier at Atlanta with a significant presence at Dallas/Ft. Worth as well, ASA is able to offer Meridian travelers on-line connecting service throughout Delta's system.

Under these circumstances, we have decided to allow Mesaba to suspend service at Escanaba, and Express to suspend service at Meridian, at the end of their respective 90-day notice periods. We will rely on Skyway at Escanaba and ASA at Meridian to provide those communities with access to the nation's air transportation system.

As a final matter, before Mesaba or Express suspends service, we expect them to contact all passengers holding reservations on affected flights, to inform them of their impending suspension of service and of the availability of other service at the communities, and to assist passengers in securing alternate transportation arrangements.

This order is issued under authority delegated in 49 CFR 1.56a(f).

ACCORDINGLY,

1. We take no action to prohibit Mesaba Aviation, Inc., d/b/a Mesaba Airlines, from suspending its scheduled service at Escanaba, Michigan, and Express Airlines I, d/b/a Northwest Airlink, from suspending its scheduled service at Meridian, Mississippi, both effective January 1, 2002;

2. We will rely on Midwest Express Airlines, Inc., d/b/a Skyway Airlines, and Atlantic Southeast Airlines to meet the essential air service needs of Escanaba, Michigan, and Meridian, Mississippi, respectively, effective January 1, 2002;
 3. These dockets will remain open until further Department order; and
 4. We will serve a copy of this order on the mayors and airport managers of Escanaba and Meridian, the Governors of Michigan and Mississippi, the Departments of Transportation in Michigan and Mississippi, Mesaba Airlines, Express Airlines I, Skyway Airlines, and Atlantic Southeast Airlines.
- By:

READ VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electric version of this document is available on the World Wide Web at
<http://dms.dot.gov/>*

Escanaba Region



Meridian Region

